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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,639	04/15/2004	James Donald Koskey JR.	KHI-0401	9016

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LAW OFFICE OF DALE B. HALLING
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COLORADO SPRINGS, CO 80910

EXAMINER

ROBINSON, DANIEL LEON

ART UNIT	PAPER NUMBER
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3742

MAIL DATE	DELIVERY MODE
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01/12/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/825,639	Applicant(s) KOSKEY, JAMES DONALD	
	Examiner DANIEL L. ROBINSON	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-16 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Election/Restrictions

Applicant's election with traverse of Species A, Claims 1-3 and 5-12, in the reply filed on 4-16-2008 is acknowledged. The traversal is on the ground(s) that the two identified Species are not independent and distinct inventions. This is not found persuasive because both Species recite features not found in the other Species and are therefore mutually exclusive since the fire retardant covering cannot be both acrylonite butadiene styrene plastic and at the same time be made of polyvinyl chloride. The unelected Species can be rejoined to any patentable subject matter at the time of allowance.

Claim Rejections - 35 USC § 103

Claims 1-2 and 6-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (U.S.Pat.6,256,257).

Stanfield discloses an animal-pet electrical heating pad 10 comprising two protecting

layers 12 and 14 made of styrene-ABC and polyvinyl chloride PVC (col. 2, lines 40-67)

and resistive heating wires 42 and 44 sandwiched between the two layers 12 and 14,

and a transfer foil 32, but does not disclose a truncated folded circle and a fire retardant

Art Unit: 3742

covering. Feibus discloses a pet cushion comprising covers 12 and 30 that can be formed from a single sheet and folded in half (col. 4, lines 4-15) and the cushion covers 12 and 30 are fire resistant (col. 4, lines 26-40). Hughes and discloses a heater comprising a cover 14 having a shape of a truncated circle on the sides (Fig. 1).

It would have been obvious to one having ordinary skill in the art to modify Stanfield's

invention to include a fire resistant covering formed from a single sheet folded in half as

taught by Feibus in order to enhance the process of making the cushion and reduce

cost, also in order to protect pet from potential injuries due to heat or fire, and also the

covering having a truncated shape as taught by Hughes in order to better fit the petmat into the doghouse. Hughes also shows using two pillow coverings to further encase and protect the inner heater and Hughes also shows using a third case 60 to carry the heated pillow. The exact shape of the pillow is well within the design abilities of some having ordinary skill in the art as per *In re Dailey*, 357 F.

2nd 669, 149 USPQ 47 (CCPA 1966). Stanfield discloses bonding - sealing of the layers 12 and 14 by

waterproof adhesive, or other method could be used for bonding these layers (col. 2,

Art Unit: 3742

lines 50-59). As for claim 6, it would be obvious to make a width of the truncated circle 10% shorter than a radius as a matter of design choice in order to obtain result wanted by user.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanfield in view of Feibus and Hughes and further in view of Brigham(U.S.Pat.4,429,216). Stanfield in view Feibus and Hughes does not explicitly show an acrylonitrile butadiene styreneplastic covering. Brigham discloses a flexible conductive layered element that shows using acrylonitrile butadiene styrene plastic as any layer in a layered structure because it has good adhesive properties.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (U.S.Pat.6,256,257). And further in view of Rau et al.(U.S.Pat.5,814,175). Stanfield in view of Feibus and Hughes does not explicitly show a welded seam. Rau discloses a welded thermoplastic polymer article and a method of and apparatus for making same that explicitly shows a welded seam. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to weld a seam because a resistive ribbon can be reused.

Allowable Subject Matter

Claims 12-16 are allowed.

Response to Arguments

Applicant's arguments filed 9-9-2008 have been fully considered but they are not persuasive. Applicant's argument that none of the references show a truncated circle see Feibus figure 1 and refer to first 103 rejection above.

Alternately it has been held ***In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)*** that a change in shape is generally recognized as being within the level of ordinary skill in the art. Also the method of manufacture is not germane to the patentability of an article.

Applicant's arguments filed 3-18-2009 have been considered but they are not persuasive. Applicant's argument that a "change in shape" is not within one of ordinary skill in the art please note whether the shape is arbitrary or not it is well within one skilled in the art to change the shape for whatever reason.

B. Changes in Shape

In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.).

Art Unit: 3742

In re Dailey, the only configuration significant in the instant application is the shape of the floor where the mat is intended to be used. Would one of ordinary skill use a truncated circle in a square structure or would one of ordinary skill cut a square mat for a round structure, clearly not, since it would waste material or not cover the useable surface and if so shape is not essential to the invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. ROBINSON whose telephone number is (571)272-4788. The examiner can normally be reached on m-f 5:30-2:30.

Art Unit: 3742

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu B Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dlr

/Daniel L Robinson/
Primary Examiner, Art Unit 3742